Medline Industries, Inc. *and* Warehouse, Mail Order, Technical and Professional Employees Union, Local 743, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Mark Ira Jamison. Cases 13-CA-14386 and 13-CA-14497

May 28, 1982

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On June 10, 1980, Administrative Law Judge Marvin Roth issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief and Respondent filed cross-exceptions and a supporting brief.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[2] findings,[3] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Medline Industries, Inc., Northbrook, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order except that the correct amount for Mark R. Kenney is $23,980.28.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The Administrative Law Judge found that employee Mark Jamison was entitled to $377.91 as backpay for the first quarter of 1976. However, at another point in his Decision, the Administrative Law Judge stated that Jamison is not entitled to backpay for the first quarter of 1976. Our review of the record herein indicates that Jamison is entitled to backpay for the first quarter of 1976 in the amount of $377.91.

As to the third quarter of 1976, the Administrative Law Judge found that Jamison is not entitled to backpay because the difference between his interim earnings and gross backpay is attributable to the fact that Jamison incurred a willful loss of earnings by quitting a full-time job (Framesmith) and working part time. Jamison's gross backpay for that quarter was $2,338.04 and his actual interim earnings were only $1,968.91. Jamison testified that in July 1976 he converted to full-time status. Since Jamison did not specify the date of this conversion, we assume that he worked part time for a portion of July. Inasmuch as Jamison's interim earnings were only $369.13 below his gross backpay, we conclude that had he worked full time for the entire quarter his interim earnings would probably have exceeded his gross backpay. Therefore, in agreement with the Administrative Law Judge we find that Jamison is not entitled to any backpay for this quarter.

The Administrative Law Judge incorrectly states that the parties stipulated that, had employee Mark Kenney been employed by Respondent at the time he was injured in an accident, he would have received $21,834.11 for medical and income continuation insurance benefits. The correct stipulated amount is $22,427.71 less $283.50 which is the amount of premium Kenney would have been required to pay during the backpay period if he had continued in the Company's employ. Kenney is therefore entitled to (1) reimbursement for the net medical insurance benefits of $22,144.21, (2) income insurance continuation benefits of $970.20, and (3) backpay of $865.87, all with interest. Accordingly, the combined net amount due Kenney is $23,980.28.

[3] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge: This case was heard at Chicago, Illinois, on January 21 and 22, 1980, for purposes of resolving a controversy over the amount of backpay due John Chorba, Gregory Fair, John Ford, Jr., Donald R. Holland, Mark Ira Jamison, Mark R. Kenney, Douglas R. Kline, and Daniel J. Weckler under the terms of the Board's order issued on November 18, 1977 (233 NLRB 627), enforced in pertinent part 593 F.2d 788 (7th Cir. 1979).[1] The Board found that Medline Industries, Inc. (herein called the Company or Respondent), discriminatorily terminated each of the employees, thereby violating Section 8(a)(3) and (1) of the Act. The Board issued, in pertinent part, a reinstatement and backpay order directing the Company to make whole each of the discriminatees "for any loss of pay (including overtime, holiday and vacation pay, and insurance claims and benefits if any), together with interest." The basic issues presented are: (1) Whether Ford, Jamison, Kenney, and Kline willfully incurred loss of interim earnings; and (2) whether Kenney is entitled to certain medical and disability payments by reason of Company-sponsored medical and income continuation insurance benefit plans under which Kenney was covered at the time of his discharge. The Company has also raised certain contentions in its brief, which the General Counsel contends are not properly a subject of litigation in this proceeding. These matters will be discussed in connection with the General Counsel's motion to strike portions of the Company's brief.

[1] At the outset of this hearing the Company conceded that it does not dispute the amount of backpay due Chorba, Fair, Holland, and the estate of Weckler, who died on or about September 1, 1979. Therefore and for the reasons indicated, *infra*, in connection with the General Counsel's motion to strike portions of the Company's brief, the issues presented in this proceeding relate only to Ford, Jamison, Kenney, and Kline.

All parties were afforded full opportunity to participate, to present relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs.

Upon the entire record in this case[2] and from my observation of the demeanor of the witnesses, and having considered the briefs submitted by the General Counsel and the Company, I make the following:

FINDINGS AND CONCLUSIONS

A. *The General Counsel's Motion To Strike Portions of the Company's Brief*

In its brief (pp. 4–11) the Company contends that in light of Mark Jamison's overall personal and work history both before and after his discharge, it is evident that for a number of reasons Jamison would have voluntarily left the Company long before October 13, 1978, when he removed himself from the job market by entering the United States Air Force. The Company argues that therefore his claim should be cut short. The Company further contends in its brief (p. 31, fn. 1) that the adjusted gross backpay for all of the discriminatees should be reduced by the sum of $5.37 per week, because "the parties have stipulated that, under Medline's medical insurance and income continuation plans, employees were required to contribute $3.15/week and $2.22/week respectively." The General Counsel filed a motion to strike the pertinent portions of the Company's brief and the Company filed a response to the motion. For the reasons discussed herein, I agree with the General Counsel that neither of the Company's contentions may properly be litigated in this proceeding, and that the second contention is based on an erroneous premise.

In its answer to the backpay specification, the Company admitted that the backpay period for each of the discriminatees began on the date of discharge and ended on the date upon which the Company offered each employee reinstatement. With respect to Jamison, it is undisputed that the backpay period began on May 23, 1975, and ended on April 25, 1979. By way of answer to the specification, the Company further stated that it was "without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IX" of the specification, and therefore denied the same. Those allegations included the General Counsel's computations of gross backpay, interim earnings, and "net backpay," i.e., gross backpay less interim earnings, for each of the discriminatees. However, the Company asserted as its first affirmative defense that each discriminatee incurred a willful loss of earnings during the backpay period. The General Counsel filed a motion to strike the Company's answer to the specification with respect to gross backpay on the ground that the answer failed to comply with the specificity requirements of Section 102.54(b) of the Board's Rules and Regulations. The motion was referred to then Acting Chief Administrative Law Judge Arthur Leff. The Company filed a response to the motion, asserting that it "continued to deny" the interim earnings and net backpay of each discriminatee, but "has never intended to deny, and does not now deny, that the numerical entries contained in paragraph IX of the Backpay Specification are true except so far as they pertain to interim earnings and net backpay." By order dated October 31, 1979, Administrative Law Judge Leff granted the relief requested in the General Counsel's motion. Specifically, Administrative Law Judge Leff ordered that "Paragraph IX of Respondent's Answer be stricken except as it pertains to the figures of interim earnings and net backpay set forth in Paragraph IX of the Backpay Specification . . . that all the allegations of Paragraph IX of the Backpay Specification shall be deemed admitted to be true except insofar as that allegation pertains to the interim earnings and consequently to the net backpay of the backpay claimants, and . . . that Respondent be, and it hereby is, precluded from introducing any evidence in this proceeding to controvert the gross backpay calculations set forth in Paragraph IX of the Backpay Specification."

In its response to the General Counsel's present motion, the Company argues that cutting short Jamison's claim would not affect the "backpay period," and therefore that the Company's admission as to the backpay period does not preclude a contention that Jamison would not have remained long with the Company. However, that is not the problem with the Company's position. For the purposes of this proceeding, the "backpay period" begins with Jamison's discharge and ends with the Company's offer of reinstatement. The Company's admission in this regard would, for example, preclude the Company from attempting to prove that it offered reinstatement at an earlier date than that alleged in the specification. I agree with the Company that its admission concerning the duration of the backpay period is not inconsistent with an assertion that Jamison would have remained with the Company for a limited period of time, and therefore that backpay should be tolled at an appropriate point. However, the Company's assertion in this regard, made for the first time in its brief, is inescapably addressed to the matter of gross backpay. Indeed, the Company impliedly so concedes in its brief (see p. 31, in which the Company proposes that, on the basis of its argument, gross backpay should not be calculated beyond 1975). See also footnote 8 of the backpay specification, in which the General Counsel submits that no calculation of backpay be made beyond the point when Jamison removed himself from the labor market. Contrary to the Company's suggestion gross backpay is not always simply a matter of mathematical calculation. Rather, the matter of gross backpay may encompass a variety of actual or potential matters in dispute, including the projected period of employment with the respondent-employer. However, in its answer to the backpay specification and in its response to the General Counsel's motion to strike portions of the answer, the Company failed to indicate that it intended to present such defense. Therefore, and by virtue of Administrative Law Judge Leff's pretrial order, the Company was precluded from disputing the amount (including duration) of gross backpay and was in effect limited to contesting only the allegations of interim earnings and consequent net backpay; i.e., the

[2] The General Counsel's unopposed motion to correct the transcript is hereby granted.

matter of whether the discriminatees willfully incurred loss of interim earnings.[3] I am not striking the pertinent section of the Company's brief in its entirety, as some portions of that section are incorporated by reference into the Company's arguments with respect to interim employment. However, I am granting the General Counsel's motion to the extent of striking the Company's brief insofar as it is addressed to the contention that "Jamison would have left Medline's employ for a number of independent reasons thereby cutting short his claim." That contention will not be considered on its merits in this proceeding.

The Company's second contention, relating to contributions to the medical insurance and income continuation plans, is like the first contention, a proposed adjustment to gross backpay which was not asserted in the answer to the backpay specification and is precluded by the terms of Administrative Law Judge Leff's order. Moreover, the Company's assertion is based on an erroneous premise. The Company admitted or stipulated that Mark Kenney was covered by the plans at the time of his discharge, that his contributions to the plans would have been $3.15 and $2.22 per week respectively, and that the Company was entitled to be credited with such amounts as would have been paid during the backpay period, as an offset to the liability for benefits which Kenney should have received as a result of his accidental injury. However, there is no evidence, stipulated or otherwise, as to whether any of the other discriminatees were covered by the medical insurance and income continuation plans. Moreover, as indicated, the Company admitted that the contributions were an offset against the alleged loss of benefits, rather than an offset against lost wages. Therefore I am granting the General Counsel's motion to strike from the Company's brief its proposal to adjust gross backpay as set forth in footnote 1 of the brief.

B. *Mark Jamison*

Jamison began working for the Company on April 10, 1975, and was discriminatorily terminated on May 23, 1975. He worked as a general laborer in the warehouse, where he received, checked, and sorted deliveries and loaded trucks. Jamison was a full-time employee who noramlly worked Monday through Friday, from 8 a.m. to 4:30 p.m. He was offered reinstatement to his former job on April 25, 1979. The General Counsel contends that Jamison is entitled to net backpay in the sum of $13,092.36, covering periods of time from his discharge until October 13, 1978, when he entered the United States Air Force. As will be discussed, Jamison's work history during the intervening period indicates intermittent employment with some eight different employers, and a pattern which repeatedly involved his quitting or refusal to accept jobs. The Company contends that Jamison willfully incurred loss of interim earnings. For reasons which will be discussed, I find substantial merit in the Company's position, and that Jamison is entitled to backpay only to the extent indicated in this Decision.

On June 9, 1975, the Company offered Jamison a nonbargaining unit job. Jamison initially accepted the offer, and returned to work for the Company, but left a few weeks later. The circumstances of this brief period of employment are discussed in the Board's Decision in the unfair labor practice case. Specifically the Administrative Law Judge found that the job in question necessitated a transfer to Baltimore, Maryland, that the Company initially exaggerated the level of responsibility involved, and that the Company required Jamison to either pay his own moving expenses or post a bond to insure that he would remain on the job. The Company initially represented the job to be an "executive type managerial or supervisory assignment," but in fact it involved only "routine menial warehouse work without any assistance, as a sort of one-man-band warehouseman-in-residence without help of any kind." In his proposed remedy, which was adopted by the Board, the Administrative Law Judge provided with respect to Jamison and two other discriminatees who were offered nonunit work, that "whether they wish to accept it is for them to decide; and any interim earnings they have received may be set off in any compliance proceeding in determining backpay, if any, due." That provision of the remedy is binding in the present proceeding. See also *Wonder Markets, Inc.*, 249 NLRB 265 (1980). Moreover, for purposes of entitlement to backpay, Jamison was not obligated to accept employment which necessitated leaving his home area. Therefore, Jamison did not incur willful loss of earnings by refusing to accept alternative employment with the Company.

Jamison testified that he began to search for work immediately upon leaving the Company. On September 16, 1975, Jamison went to work as a warehouseman for Quality Books. Jamison began working for $2.75 per hour, and was raised to $3 per hour. However he left after about a month in order to accept what he considered to be a better position as a store manager with Framesmith, which operated several stores where it was engaged in the fabrication and sale of picture frames. Jamison previously worked as a store manager for Framesmith before going to work for the Company. Jamison worked for Framesmith from October 1975 to January 1976 when he quit his job without any immediate prospect of alternative employment. Jamison testified that he left Framesmith because of a disagreement over a bonus arrangement, and because he was not satisfied with the way in which the stores were run. Jamison received a wage of $3 per hour. He testified that he also had a bonus arrangement which was orally agreed upon be-

[3] The contention which the Company now belatedly attempts to raise in its brief was to some extent litigated in the unfair labor practice proceeding. The Administrative Law Judge found that Company President James Mills told discriminatees Jamison and Kenney, prior to their discharge, that "those guys who didn't need the job and didn't plan on staying with the Company would leave," whereupon Jamison and Kenney insisted that they had no plans to leave the Company and needed their jobs. However, in the unfair labor practice proceeding the Company contended that the terminations were "economically necessitated." The Administrative Law Judge rejected this defense, and found that the employees were terminated because of their "protected concerted organizational activities." It would seem to be implicit in the Administrative Law Judge's ultimate findings, that Mills' reference to employees who "didn't plan on staying," was also pretextual. However, as the parties were not on notice that the duration of Jamison's projected employment would be an issue in this proceeding, and in fact Administrative Law Judge Leff's order precluded such litigation, the matter was not pursued.

tween himself and James Smith, the owner of Framesmith. Jamison testified that he could not recall the exact terms of the arrangement, but that he was to receive as a bonus the difference between labor costs and a certain percentage of gross sales at Framesmith's Deerbrook store. According to Jamison, Smith violated the agreement by including Jamison's salary as part of the labor cost, and thereby substantially reducing the amount of Jamison's bonus. Jamison further testified that Smith was not interested in running a successful business; e.g., he declined to purchase sufficient materials to obtain a large order, that he simply regarded Framesmith as his hobby, which was subservient to his other business interests, and that in fact Framesmith went out of business about 8 months after Jamison left.

The Company correctly points out that, under established Board policy, a claimant is deemed to have willfully incurred loss of income by voluntarily relinquishing interim employment "without compelling or justifying means." *Knickerbocker Plastic Co., Inc.*, 132 NLRB 1209, 1212 (1961); see also *Shell Oil Company*, 218 NLRB 87 (1975).[4] Absent such means, the claimant's projected earnings from the interim employment operates as a continuing offset against gross backpay. *(Knickerbocker Plastic, supra*, 132 NLRB at 1215.) In the present case, I find that Jamison quit his job with Framesmith without the requisite compelling or justifying means. Regardless of Jamison's alleged dissatisfaction, the backpay specification indicates that Jamison's interim earnings at Framesmith exceeded the income which he would have received at the Company. The Framesmith position also afforded to Jamison the responsibility which he ostensibly desired, and also enabled him to perform work for which he was qualified and which he enjoyed; namely, picture framing. Jamison's alleged dissatisfaction might have been a justification for seeking alternative employment. However, it did not justify his action in willfully incurring loss of earnings by leaving Framesmith without any prospect of alternative employment. Compare, *Knickerbocker Plastic Co., supra*, 132 NLRB at 1216, in which the Board held that a claimant incurred willful loss of earnings by quitting an interim job because the employer refused to give her a pay raise. See also *Miami Coca-Cola Bottling Company*, 151 NIRB 1701, 1703 (1965). Moreover, in light of Jamison's subsequent record, which will be discussed, I find that Jamison quit his employment at Framesmith in order to pursue his college studies. Therefore, Jamison withdrew from the job market to the extent that he relinquished full-time employment which interfered with those studies. See *L.C.C. Resort, Inc., d/b/a Laurels Hotel and Country Club*, 193 NLRB 241, 246, 247 (1971). I find that Jamison's projected earnings at Framesmith should operate as a continuing offset against gross backpay until September 1976, when, according to Jamison, Framesmith went out of business. Jamison worked at Framesmith through the fourth quarter of 1975, and his interim earnings, amounting to $2,221.61, exceeded gross backpay for that quarter. Jamison's earnings with Framesmith for the fourth quarter of 1975 constitute an appropriate measure of offset against gross backpay for the first and second quarters of 1976. Gross backpay for these quarters was $2,599.52 and $2,015.31, respectively (actual interim earnings were $325.80 and $726.50 respectively). Therefore, Jamison is entitled to net backpay of $377.91 for the first quarter of 1976, and none for the second quarter of 1976.

Jamison testified that after leaving Framesmith he looked for work which he was qualified to perform. However, in or about January 1976 he enrolled as a student at the College of Lake County in Grays Lake, Illinois. Jamison took three courses, meeting both days and evenings, and averaging 9 hours of classroom time per week. In March 1976 Jamison began working as a part-time data control clerk in the electronic data processing department of Kemper Insurance Company. He worked from midnight to 4 a.m. In July 1976, i.e. shortly after the end of the school year, Jamison began working as a full-time employee, from midnight to 8 a.m.[5] However, in September 1976, Jamison left Kemper for a similar job with Washington National Insurance Company. Jamison testified that he went to Washington National because the job paid more and he could learn more about data processing. Jamison was earning $540 per month when he left Kemper. At Washington National he started at $650 per month. Jamison remained with Washington National until January 1977. The backpay specification indicates that Jamison's gross backpay exceeded interim earnings during each quarter of 1976. However, the specification also indicates that Jamison's projected earnings at Framesmith would have exceeded gross backpay for the first two quarters of 1976. The specification further indicates that gross backpay exceeded interim earnings by $369.13 during the third quarter of 1976. Framesmith apparently went out of business during the last month of that quarter. However, the deficiency in interim earnings is attributable to the fact that through June 1976 Jamison intentionally accepted only part-time work. Therefore, with respect to 1976, Jamison is entitled to backpay only for the fourth quarter ($5.86).

In January 1977 Jamison enrolled as a "full-time student" (his own words) in University of Illinois at the Chicago Circle campus. Jamison took four courses. He remained at the University of Illinois through the winter

[4] The General Counsel contends (br., p. 4) that the "test under such circumstances is not whether any employee, or most employees, would have found conditions with the interim employer unacceptable," but the subjective standard of "whether the discriminatee genuinely believed them to be so." In support of this proposition the General Counsel lists three citations of Board cases, two of which are erroneous, and none of which support the proposition. See *Shell Oil Company, supra*, 218 NLRB at 88–89. It is unlikely that the Board would adhere to such a standard, which depends upon vague, shifting, and subjective factors. Moreover, the proposed standard would run counter to the underlying "healthy policy" in these proceedings "of promoting production and employment." *Phelps Dodge Corporation* v. *N.L.R.B.*, 313 U.S. 177, 200 (1941).

[5] In May 1976 Jamison underwent surgery for removal of cartilage on his leg. He was hospitalized for 3 days, but promptly returned to work, although he wore a compression cast on his leg for about 3 weeks, used crutches for about 2 weeks, and thereafter wore a brace. Jamison testified that he was fully recovered in about 4 months; i.e., by September 1976. Having found that Jamison willfully incurred loss of earnings and is not entitled to any backpay during this period, I find it unnecessary to pass upon the Company's contention that backpay should also be tolled because Jamison was physically disabled from performing the warehouse work which he had performed with the Company.

and spring terms of 1977. Jamison resumed his studies at the University of Illinois in January 1978, and again continued through the winter and spring terms. In January 1977 Jamison voluntarily quit his employment with Washington National in order to take a job as a machine operator with Profile Plastics. At the time Jamison left Washington National, he was working a rotating shift (3 days on and 4 days off) Jamison testified that he found it "difficult to cope with" this schedule. However, Jamison conceded that the real problem was that the Washington National job interfered with his academic schedule. Jamison also admitted that, after leaving Washington National, he declined similar work as a data control clerk with Kitchens of Sara Lee, although that position would have entailed third shift work (midnight to 8 a.m.); i.e., the same hours which he worked at Kemper Insurance Company. Jamison worked on the second shift at Profile Plastics (3:30 p.m. to 11:30 p.m.) earning $3.10 or $3.20 per hour. He testified that the employer accommodated his academic schedule by permitting him to sometimes come in late for work. However, Jamison testified that about February 4, 1977, he was "laid off" by Production Manager Larry Stakel, because Stakel wanted only employees who could work a full shift. Jamison's personnel record at Profile Plastics indicates that he quit because he wanted part-time work. On May 20, 1977, coincidental with the end of the spring semester, Jamison again went to work for Profile Plastics as a machine operator, working as a full-time employee on the third shift. Jamison did not obtain any other employment during the period from February 4 to May 20, 1977, nor does his testimony indicate that he made any effort to obtain full or part-time work during this period. The decision in the present unfair labor practice proceeding (233 NLRB at 635, fn. 30) indicates that the Company has been willing to adjust working hours for employees, such as Jamison, who might wish to take college courses in the evening. However, at no time during the backpay period did the Company operate with a second or third shift. Rather, full-time employees, including Jamison, normally worked from about 8 a.m. to about 4 p.m. Therefore, at no time material could Jamison have worked with the Company and still maintain his academic schedule at the University of Illinois. I find that Jamison willfully incurred loss of earnings by quitting his job with Washington National, and by refusing to accept full-time employment with Profile Plastics or Kitchens of Sara Lee, because he wished to pursue his academic schedule as a full-time student at the University of Illinois. Therefore, Jamison's projected earnings as a full-time employee at Washington National or at Profile Plastics (whichever is the greater) constitutes a continuing offset against gross backpay. The backpay specification indicates that for the fourth quarter of 1976, when Jamison worked full time for Washington National throughout the quarter, his interim earnings amounted to $2, 202.72. The present record is inconclusive as to whether Jamison would have earned more with Washington National in succeeding quarters or as to how much Jamison would have earned with Profile Plastics had he worked full time throughout the first and second quarters of 1977. I find that Jamison's interim earnings for the fourth quarter of 1976 may be used as a basis for projecting his earnings during the first two quarters of 1977. Therefore, Jamison is not entitled to any backpay for the first quarter of 1977 (When projected earnings exceed gross backpay) and he is not entitled to any backpay in the net amount of $397.43 for the second quarter of 1977, representing gross backpay less projected interim earnings.

When Jamison returned to Profile Plastics in May 1977 he began working at $3.20 per hour. After 30 days his rate increased to $3.40 and on July 5, 1977, to $3.50 per hour. In early July, Jamison transferred to the first shift, and his supervisor, Production Manager Stakel, asked him to participate in a training program for setting up and maintaining the Company's rotary presses. Until this time, Jamison had only operated the machines. Jamison agreed to go through the program. Eduardo Buelvas, who was presented as a company witness in this proceeding, was in charge of Jamison's training. Buelvas was then the setup leadman, and at the time of the present hearing was day-shift foreman at Profile Plastics.[6] The training program ran for 30 days. Buelvas was scheduled to go on vacation for 3 to 4 weeks in September 1977, and the employer was concerned that there be some one in the plant who could be counted upon to perform the setup work in Buelvas' absence. Jamison was aware of these facts. The employer recognized that Jamison had an aptitude for the work. At the conclusion of the training period (August 3, 1977) the employer evaluated Jamison's ability and performance and found that "he does set up rotary jobs better than any other trainee we have ever had." The Company gave Jamison a 50-cent-per-hour raise to $4 per hour. Buelvas testified that he has trained some 15 to 20 employees to perform the setup work, and that, other than Jamison, none of them complained about the adequacy of their training. Jamison testified that after the training program was completed, he felt that he needed more training. In fact, Jamison continued to do setup work through August, when Buelvas was in the plant and available to check his performance. Nevertheless, on September 14, 1977, some 1-1/2 to 2 weeks after Buelvas went on vacation, Jamison informed Stakel that he was quitting because he could not perform the setup work. Jamison testified that, at the time, he was assigned to do a complicated operation which he felt unable to perform. According to Jamison, there was no one there to help him. However, Buelvas testified that there was another employee who had knowledge about setting up rotary presses. Jamison's personnel record indicates that Production Manager Stakel pleaded with him to remain. There is no indication that the employer refused to help Jamison. Jamison testified that on one occasion a filter blew up in his face. However, this occurred during his training program, and the training program covered safety procedures. If Jamison was genuinely concerned that setup work was too dangerous for him, then it is probable that he would have asked to be taken off such work when the incident

[6] As of the time of this hearing, Production Manager Stakel was no longer employed by Profile Plastics. Company counsel asserted that he tried, but was unable, to locate Stakel. I accept his representation in this regard.

occurred or at the completion of the training program. It is also unlikely that Stakel would have urged Jamison to remain at his job if he had reason to believe that Jamison was incapable of performing the work. Moreover, Jamison did not impress me as an individual who was lacking in self-confidence.

The General Counsel's contention that Jamison was justified in abruptly quitting his job with Profile Plastics might be persuasive if this were the only occasion on which Jamison voluntarily left interim employment during the backpay period. However, the Board has held, in comparable circumstances, that willful loss of earnings is evidenced when a claimant exhibits "a propensity to quit jobs for a myriad of reason." *Knickerbocker Plastics Co., Inc., supra*, 132 NLRB at 1212–13 (contreras). Both before and after September 1977, Jamison demonstrated an unwillingness to work at any job for more than a few months. During the fourth quarter of 1977, Jamison obtained a job as a picuture framer with Cole National Corporation, which operated a hobby shop. Jamison initially testified that after 2 weeks the whole staff was terminated. However, he next testified that he left because he did not agree with some changes which were made by the district manager, and because "it wasn't the same as the position I applied for." In sum, Jamison quit, and he did so without any immediate prospect of alternative employment.[7] In January 1978, Jamison worked on a production line for Aerwey Labs in Deerfield, Illinois (second or third shift), earning about $3 per hour. Jamison testified that he left this job because he sprained his knee during a snowstorm in an accident unrelated to his job. Jamison testified that he was unable to work at Aerwey for several weeks, because the job involved standing and moving. If Jamison were unable to perform the work at Aerway, then he obviously would have been unable to work as a warehousemen with the Company. Therefore he is not entitled to any backpay for the period of his disability. *Certified Meats, Inc.*, 235 NLRB 1286, 1288 (1978). Jamison testified that sometime in February 1978 he was sufficiently recovered to return to work. Nevertheless he did not even contact Aerwey, although Aerwey's personnel office had advised him to call when he was ready to return. I do not credit Jamison's explanation that he did not call because he did not think they had work for him. By this time Jamison had again enrolled at University of Illinois, and it is evident from his overall pattern of conduct that for this reason he was no longer interested in full-time employment. However, Jamison did subsequently work as a part-time employee for Northport News. Jamison testified that in August 1978 he refused an offer of a job with Patrician Galleries in Des Plaines, Illinois. The job, which paid $3 per hour, involved constructing picture frames on an assembly line basis. Jamison testified that this work was not commensurate with his abilities, because he preferred to construct picture frames as a craft. However, Jamison's job at the Company also involved unskilled work. I find that Jamison again willfully incurred loss of earnings by refusing to take a job with Patrician Galleries.

I find that Jamison's projected earnings at Washington National Insurance Company or at Profile Plastics, whichever is the greater, should operate as a continuing offset against gross backpay. The backpay specification indicates that Jamison's earnings at Profile Plastics exceeded gross backpay for the third quarter of 1977. The specification indicates that Jamison would have been earning $5 per hour with the Company during the third and fourth quarters of 1977 and $5.25 per hour throughout 1978. Gross backpay for the fourth quarter was $2,889.65, the highest figure for any quarter of the backpay period. Jamison's interim earnings at Profile Plastics during the third quarter of 1977 amounted to $2,201.96. This figure, compared with his hourly wage figures, indicates that he was regularly working at least 40 hours per week. As of the time he quit (September 14) Jamison was earning $4 per hour. I find that in addition to his actual earnings, projected earnings of $384 (pay for the remaining 12 days of work in September, assuming a 40-hour week) should also be deducted from gross backpay. Therefore Jamison is entitled only to net backpay in the amount of $303.69 for the fourth quarter of 1977. The specification indicates for the first quarter of 1978, gross backpay amounting to $2,620.74, and actual interim earnings of $684.35. However, by reason of his injury, Jamison would not have been able to work for the Company for a period of about 3 weeks. There were 13 full weeks during this quarter. These figures, together with the hourly wage of $5.25 indicate an average of slightly over 38 hours of work per week with the Company during the quarter. Therefore gross backpay should be reduced in the amount of $599.50, leaving gross backpay of $2,021.24. However, Jamison also would not have been able to perform his job at Profile Plastics. Therefore projected earnings at Profile should also be reduced by an appropriate amount. I find that the continuing offset, based on projected interim earnings at Profile of $2,585.96 in a calendar quarter, should be reduced by three-thirteenths, or approximately $600. Therefore, Jamison is entitled to net backpay of $35.28 for the first quarter of 1978.[8] Gross backpay for the second quarter of 1978 amounts to $2,779.88, (actual interim earnings were $1827.12.) As indicated, gross backpay should be offset by the amount of Jamison's projected earnings at Profile Plastics ($2,585.96) during the third quarter of 1977. Therefore Jamison is entitled to net backpay of $193.92 for the second quarter of 1978. Projected interim earnings exceed gross backpay for the third and fourth quarters of 1978. Therefore, there is no net backpay for these periods. In sum, Jamison is entitled to total net backpay of $1,893.23 plus interest as follows:

[7] Also in the fourth quarter of 1977 Jamison took a 2-week vacation trip to Greece and Israel. However as a full-time employee of the Company, Jamison would by this time have been entitled to 2 weeks of paid vacation each year. Therefore he should not be denied any backpay by reason of this trip.

[8] Jamison's testimony with respect to his operation in May 1976 indicates that his leg injury in January 1978 would not have prevented him from working as a data control clerk, even while wearing a cast on his leg. However, it would seem inappropriate and unrealistic to use the Profile Plastics job as an offset for the fourth quarter of 1977, and then switch to the earlier job at Washington National as the appropriate offset for the first quarter of 1978.

Quarter	Net Backpay
1975-2	$579.14
1976-1	377.91
76-4	5.86
1977-2	397.43
1977-4	303.69
1978-1	35.28
Total Net Backpay	$1,893.23

C. *Mark Kenney*

1. The claim for lost wages

At the time of his discriminatory termination on May 23, 1975, Kenney was working for the Company as a stockman. He had been employed by the Company for less than 3 months. Kenney did not register for work with the Illinois Bureau of Employment Security (BES) at any time during his backpay period. Initially Kenney relied on private leads to secure interim employment, and his efforts were soon successful. Within 1 to 2 weeks of his discharge, he learned of a job opportunity from a friend whose father was the president of Floors by Vinci, which was engaged in the business of tile and carpet setting. Kenney started working for Floors by Vinci on June 16, 1975. He began as a truckdriver, but was shortly placed in charge of the tile side of the warehouse, receiving and taking orders and loading material on trucks. Kenney testified that his title was "warehouse manager," and that he supervised three or four truckdrivers. Kenney began with a weekly salary of $175, which was increased to $190 in late July and to $200 in late August. In December 1975 Kenney received a bonus of $610. He testified that he did not know in advance that he would be receiving the bonus. In December, after receiving the bonus, and without any immediate prospect of alternative employment, Kenney voluntarily quit his job with Floors by Vinci. Kenney testified that he did so because he was working 60 to 80 hours per week, and he felt that his salary, which was not accompanied by overtime pay, was inadequate for such long hours. However, in his investigatory affidavit to the Board, Kenney stated that he left because the relative of an executive was making more money than Kenney. In his testimony Kenney added that he observed favoritism. With regard to the alleged problem of long hours for inadequate pay, Kenney testified that he did not ask for overtime pay because he was employed on a salary basis. However, his pay stubs (at least those which he had in his possession) were presented in evidence by the Company. They each contained entries for "total hours" and "regular" and "overtime pay." The stubs indicated that Kenney did not work more than 40 hours during any week except the week ending August 9, when he put in 5 hours of overtime and earned $35.60 in overtime pay.

As to the matter of favoritism or salary discrimination, Kenney testified that he complained to his immediate supervisor that employee Jeff Rapacz was making $225 for doing the same work as Kenney. Kenney testified that the supervisor answered that it was none of his business. However, the surrounding circumstances indicate that there were at least mitigating circumstances in this ostensible discrimination. On October 6, 1975, Kenney was injured in a motorcycle accident. He was away from work for 2 to 3 weeks, but (as indicated by his paystubs) he continued to receive his full salary in the form of sick pay for at least part of this period.[9] Upon his return to work Kenney had to wear a brace on his leg for another 3 to 4 weeks. As a result of his disability Kenney was unable to perform warehouse work. Floors by Vinci assigned Kenney to do office work, and Rapacz was assigned to the job of "warehouse manager." Kenney was not informed as to whether this would be a permanent change. However, the present record does not indicate that Kenney ever returned to warehouse work. It is possible that had Kenney been able to continue to perform warehouse work, he might have received a raise. These circumstances do not indicate that Floors by Vinci engaged in favoritism or discrimination by paying Rapacz $225 per week when he was suddenly called upon to perform Kenney's job.

I find that Kenney incurred willful loss of earnings by quitting his interim employment with Floors by Vinci "without compelling or justifying means." *Knickerbocker Plastic, supra*, 132 NLRB at 1212. Kenney's assertion that he quit because he was overworked and underpaid are refuted by his own testimony and by his paystub records. The records indicate that Kenney normally worked a 40-hour week, and that he was paid overtime when he worked overtime. Kenney's testimony further indicated that after he was injured in October 1975 the employer transferred him to office work. Kenney abruptly quit his job after he received a substantial bonus. His action was particularly unwarranted in view of the fact that he had no alternative employment. Therefore, Kenney's projected earnings at Floors by Vinci should operate as a continuing offfset against his backpay claim. Moreover, I find that from the time Kenney quit his job until he next obtained interim employment in the spring of 1976, Kenney did not make an honest good-faith effort to obtain interim work. Rather, the evidence concerning this interim period, coupled with Kenney's precipitate action in leaving Floors by Vinci, tends to indicate that he was not particularly interested in a job at this time. Kenney lived in Barrington, Illinois, a small suburban community which is located at least 20 miles from Northbrook. Unlike Douglas Kline and John Ford, whose cases will be discussed, *infra*, Kenney had the regular use of an automobile for commuting to and from work. Nevertheless, Kenney testified, without explanation, that he actively looked for work only in Barrington and nearby communities. As indicated, Kenney did not register for work with BES. Kenney testified that he did not recall filling out any employment applications, and he did not name any firms which he contacted, other than Tri-Star Cycles in Crystal Lake, Illinois, where he eventually found employment. Although Kenney previously participated in a training program for motorcycle mechanics, he testified that he looked for such work at

[9] Kenney's paystub for the week ending October 11 indicates that he received his full salary of $200 in the form of sick pay. Kenney did not produce any paystubs for the remaining period of his absence. He did not testify as to whether or not he was paid for this period, and the General Counsel did not produce any pertinent records for this period.

only one or two places. (Kenney was hired by Tri-Star Cycles as an apprentice mechanic.) In February 1976, Kenney went to Hawaii for a 10-day vacation. This fact further tends to indicate that he was in no particular hurry to obtain interim employment.[10] I find that Kenney is entitled to backpay only for the second quarter of 1975, in the amount of $865.87, plus interest.[11]

2. The claim for medical expense and income continuation benefits

The facts concerning this claim are substantially admitted, stipulated, or uncontroverted. At the time of his discharge on May 23, 1975, Kenney was by virtue of his employee status eligible for participation in, and did participate in, a group medical insurance benefit plan administered on behalf of the Company by Employers Mutual Liability Insurance Company of Wisconsin. At the time of his discharge, Kenney was by virtue of his employee status also eligible for participation in, and did participate in, an income continuation insurance benefit plan administered on behalf of the Company by United Benefit Life Insurance Company. By discharging Kenney, the Company caused his participation in these plans to cease, and caused him to become ineligible to participate in those plans or any other company medical insurance or income continuation plans from May 23, 1975, until February 14, 1977.

On June 2, 1976, during the period of his employment with Tri-Star Cycles, Kenney sustained serious physical injuries in an automobile accident. At the time, Kenney was not covered by any medical insurance or income continuation plan coverage. Kenney testified that to his knowledge neither Floors by Vinci nor Tri-Star Cycles, his two interim employers, made such coverage available to their employees. As no evidence was presented to the contrary, I find that such was the case. Kenney lived with his parents. Kenney's father, Robert Kenney, was at the time of the accident employed by Litton Medical Systems. Robert Kenney testified that through his employer he was covered by a group health insurance plan, but that Mark was not eligible for coverage under the plan because he was over 19 years of age (20 to be exact) and not in school. Mark Kenney owned an automobile, but his automobile insurance policy did not provide for payment of medical expenses or compensation for lost income. Mark Kenney testified that he did not consider obtaining his own medical insurance policy until after the accident.

Robert Kenney testified that he personally paid all of Mark's hospitalization and other medical expenses arising from the accident. These expenses amounted to over $25,000. The parties stipulated that if Mark Kenney was still employed by the Company at the time the expenses were incurred, and if Kenney had submitted the bills to the Company's insurance carrier for payment, the insurance carrier would have paid reimbursement for those bills in the amount of $21,834.11 (total of amounts listed on page 1, column 5 of G.C. Exh. 8). Broken down by calendar quarters, the compensible expenses were incurred as follows (expenses incurred in a period including portions of two quarters are attributed to the latter quarter):

2d qtr—1976	$4,210.40
3d qtr—1976	14,849.27
4th qtr—1976	2,774.44

The parties further stipulated that as an offset to the claim for reimbursement for the compensable medical expenses, the Company would in any event be entitled to credit in the amount of $3.15 per week during the backpay period, constituting the amount of premium which Kenney would have been required to contribute during the backpay period, had he continued in the Company's employ. As there are 90 weeks in the backpay period, this offset would amount to a maximum of $283.50. The parties further stipulated that if Mark Kenney were employed by the Company on the date of the accident (June 2, 1976) he would have received, by way of benefits under the income continuation plan, 13 weeks of payments at $90 per week for a total of $1,170, during the third quarter of 1976. The parties also stipulated that the Company would in any event be entitled to an offset against this claim in the amount of $2.22 per week during the backpay period, constituting the amount of money which Kenney would have been required to contribute toward the plan if he had been employed by the Company. The total amount of such contributions would have been $199.80. With respect to the claim for medical insurance benefits, Robert Kenney testified without contradiction that he was never reimbursed for his payment of Mark's expenses, but that after he paid the bills, Mark orally agreed to reimburse him to the extent that any award was received in this proceeding.

The General Counsel contends that the Company should reimburse Mark Kenney for the medical and income continuation benefits which would have been paid by the insurers if Kenney had been in the Company's employ at the time of the accident. The Company contends that it should not pay the amount of any medical benefits because in sum: (1) Robert Kenney, as a third party, cannot be reimbursed for his losses in a backpay proceeding; (2) Mark Kenney cannot be reimbursed because he suffered no "actual loss," in that his father paid all of his bills; and (3) Mark Kenney is not entitled to any reimbursement because he willfully incurred any loss he may have suffered by failing to secure interim insurance coverage. The first argument is not directly addressed to the General Counsel's claim as set forth in the backpay specification, and strictly speaking is not actually an issue in this case. The specification makes claim solely on behalf of Mark Kenney. The General Counsel does not contend that the Company should reimburse Robert Kenney, nor does the General Counsel contend

[10] In any event, Kenney would not be entitled to any backpay for the time he spent in Hawaii. See *Gary Aircraft Corporation*, 210 NLRB 555, 557 (1974). As a full-time company employee, Kenney would not have been entitled to a paid vacation until June 1, 1976.

[11] For the third quarter of 1975, Kenney's interim earnings at Floors by Vinci exceeded his gross backpay. The balance of his backpay claim (fourth quarter of 1975 and first and second quarters of 1976) reflects his lack of employment between leaving Floors by Vinci and going to work for Tri-Star Cycles. On June 2, 1976, Kenney was physically injured and thereby rendered unavailable for employment. Therefore there is no computation of backpay beyond that date.

that any award to Mark Kenney should be conditioned on reimbursement to his father. Rather, so far as this proceeding is concerned, any agreement between Mark Kenney and his father is unenforceable and solely a personal matter between them.[12] I further find that the second argument is without merit when viewed in light of the principles applicable to Board backpay proceedings. It is settled law that lost fringe benefits of employment such as insurance benefits, are compensable items in a backpay proceeding. See, e.g., *Rice Lake Creamery Co.*, 151 NLRB 1113, 1129-31 (1965), enfd. as modified in other respects 365 F.2d 888 (D.C. Cir. 1966); *Deena Artware, Incorporated*, 112 NLRB 371, 375, 382 (1955), affd. 228 F.2d 871 (6th Cir. 1955). Moreover, the Board's order in the present case specifically provides for reimbursement to the discriminatees for lost insurance claims and benefits, if any. Mark Kenney did in fact lose medical and income continuation benefits which he would have received if he were still in the Company's employ on June 2, 1976. The Company's argument that Mark Kenney sustained no compensable loss because his father paid all of his medical bills, runs counter to the principles applicable in backpay proceedings. Actual net financial "loss" as such is not the measure by which backpay is determined. Interim earnings are properly deducted against gross backpay. Thus, income actually or constructively earned during the backpay period is deductible against the claim for loss wages. Similarly, proceeds from substitute insurance are a proper offset for the employer for claims on the same losses. *Rice Lake Creamery Co., supra*, 151 NLRB at 1131. However, it is settled law that collateral benefits, such as unemployment compensation and union strike benefit payments, are not deductible as interim earnings or other offset against gross backpay, even when the amount of such collateral benefits equals or exceeds the gross backpay claim. "Since no consideration has been or should be given to collateral *losses* in framing an order to reimburse employees for their lost earnings, manifestly no consideration need be given to collateral benefits which employees may have received." *Gullett Gin Company* v. *N.L.R.B.*, 340 U.S. 361, 364 (1951). Robert Kenney's action in paying his son's medical expenses, whether such payment be deemed as a gift, loan, conditional loan or the meeting of a moral obligation to one's offspring, constituted a collateral benefit which is not an offset against Mark Kenney's claim for lost benefits, because such payment did not constitute compensation to Mark Kenney for services performed. *N.L.R.B.* v. *My Store, Inc.*, 468 F.2d 1146, 1149-50 (7th Cir. 1972), cert. denied 410 U.S. 910 (1973); *Associated Transport Company of Texas Inc.*, 194 NLRB 62, 73 (1971). In *My Store*, the court, in agreement with the Board, held that weekly payments by a union to unfair labor practice strikers who were improperly denied reinstatement to their jobs were not deductible from gross backpay. The payments were equal in amount to the wages which the strikers would have received (exclusive of fringe benefits), and were given as "loans," with a commitment that the strikers would repay the money when the employer honored its backpay obligations to them. The court held that these payments were collateral benefits which were not deductible from gross backpay because they were not given as compensation for picketing or other services. The facts in *My Store* are analogous to those in the present case, and the principles set forth therein are also here applicable.[13] In sum, I find that Mark Kenney sustained a compensable loss of medical and income continuation insurance benefits, and that his father's action in paying his medical expenses was a collateral benefit which is not deductible from gross backpay.

With regard to the Company's third argument, I agree with the Company that losses "willfully incurred," whether in the form of lost earnings or lost fringe benefits, are not compensable in a backpay proceeding. However, I do not agree that this principle requires a discriminatee to incure expenses out of his own pocket in order to make up for lost fringe benefits. As a result of the Company's discriminatory conduct, Mark Kenney lost not only his job, but also the benefit of a group medical insurance policy which cost him only $3.15 per week, deducted from his paycheck. The Company has presented no evidence as to how much it would have cost Kenney to obtain comparable individual insurance coverage at his own expense. Given prevailing rates, it is probable that the cost would have substantially exceeded the sum of $3.15 per week. As indicated, I have found that Kenney left his interim job with Floors by Vinci without compelling or justifying means, and that he thereafter did not make an honest good-faith effort to obtain interim work. However, these findings, in the circumstances of Kenney's situation, do not warrant a finding that Kenney willfully incurred loss of his insurance benefits. Floors by Vinci did not provide insurance coverage for its employees. At the time of the accident, Kenney was once again gainfully employed, but his employer, like Floors by Vinci, also did not provide insurance coverage. In the landmark case of *Phelps Dodge Corporation* v. *N.L.R.B., supra*, 313 U.S. at 197-200, the Supreme Court made clear that in establishing the principle that deduction should be made for losses "willfully incurred," i.e., "a clearly unjustifiable refusal to take desirable new employment . . . we have in mind not so much the minimization of damages as the healthy policy of promoting production and employment." No such "healthy policy" is served by compelling a discriminatee to make up lost fringe benefits out of his own funds. We are not yet a society where individuals (except those eligible for Medicare) can obtain health insurance on their own at nominal or no cost. Therefore, Mark Kenney did not incur willful loss of medical insurance benefits, and he is entitled to reimbursement for lost medical insurance benefits in the net amount of $21,550.61, and to income

[12] Therefore, I excluded questioning by company counsel of Robert Kenney concerning matters in potential mitigation of his losses; e.g., how or where he obtained the money to pay the bills, and whether he could have reduced his income taxes by reason of such payment.

[13] In *Deena Artware, supra*, 112 NLRB at 375, 382, the Board ordered that the employer reimburse 12 female discriminatees for maternity insurance benefits which they lost when they each gave birth during the backpay period. The Board did not inquire into whether any third person paid the hospital and other medical expenses in question, although it is at least plausible that in at least some instances the father paid the bill.

continuation insurance benefits in the net amount of $970.20, both with interest.[14]

D. *Douglas Kline*

Kline was discriminatorily terminated by the Company on May 23, 1975, and was offered reinstatement on March 5, 1977. The General Counsel contends that Kline is entitled to full reimbursement for his lost earnings, less interim earnings, through the second quarter of 1976. Thereafter Kline's interim earnings exceeded gross backpay for each quarter. The Company contends that Kline did not make a diligent search for interim employment and should not receive any backpay for the second and third quarters of 1975.

In the unfair labor practice proceeding, the Administrative Law Judge found that in June 1975, Company President Mills discussed with Kline the prospect of other employment, "including such seemingly esoteric possibilities as fur skinning and ski slope cleaning as a ski bum in New Mexico." Kline pointed out that with the exception of a possible job with Metropolitan Wire Company in Northbrook, located about 1-1/2 miles from his home, he had no way of getting to any of the suggested possible jobs, none of which involved a firm offer. Kline followed through on the Metropolitan Wirelead, but was subsequently informed that there was no job for him there. In the interim, Mills offered Kline the possibility of no lower rate of pay and steady employment at Metropolitan in return for a withdrawal of the pending unfair labor practice charges insofar as they involved Kline. I agree with the General Counsel that the Administrative Law Judge's findings with regard to the episode tend to indicate that Kline wished to and did actively seek interim employment from the time of his discharge.

At the time of his discharge, and throughout the backpay period, Kline lived at the family home in Northbrook with his parents. Kline did not own or have the regular use of an automobile. His only regular means of transportation were by walking and bicycling. His home was a 3-minute walk from the Company's plant. During the summer of 1975 Kline began working at the Highland Park Animal Hospital, located in Highland Park or Deerfield, Illinois, about 10 miles from his home. Kline had to borrow cars in order to commute to and from work. The arrangement was not easy, but Kline remained with his job. He was responsible for the care and handling of animals. Kline's starting wage was about $3.50 per hour. After nearly a year his wage had progressed to $4.25 per hour. Thereafter his interim earnings exceeded gross backpay.

Kline, who was presented as a company witness, testified that he began looking for work immediately after his discharge, and continued to actively seek work until he obtained his job with Highland Park Animal Hospital. Kline testified that he looked for work in Northbrook and other suburban communities north of Chicago. Kline checked newspaper help want-ads. In his testimony Kline identified by name approximately 18 firms where he sought employment, and identified the location of other firms where he also sought employment. Kline testified that he filled out applications, was also interviewed at some firms, and was told at some that they were not taking applications. Kline did not indicate that he received or rejected a job offer before going to work for Highland Park Animal Hospital. Kline testified that he registered with the BES within about 2 weeks of his termination, and returned once or twice before obtaining employment. Kline testified that he "believed" that he applied for unemployment compensation and received one check, but that there was some mix up about checks not coming in regularly. However, Kline testified that this might have occurred before 1975 and prior to his employment with the Company. No other witnesses were presented with respect to his backpay claim. The Company offered in evidence, unsupported by any testimony, a computer printout from the BES purporting to show that no benefits were paid to Kline (identified by social security numbers) during the period from January 1, 1975, to January 8, 1980. I rejected the offer. First, in the absence of explanatory testimony, there is no assurance that the printout is either accurate or complete. (Authenticity was not disputed.) Second, even if the printout were both accurate and complete, the printout would not serve to impeach Kline's testimony. The printout purports to show only that no benefits were paid to Kline since January 1, 1975, and not that he failed to register for employment. Moreover, Kline testified that he was not sure whether he received a compensation check during the backpay period or in an earlier period of unemployment prior to 1975. In light of Kline's lack of recollection about the precise circumstances of this matter, it is more probable that the problem with payments occurred prior to 1975. I credit the testimony of Kline concerning his efforts to obtain interim employment. I find that Kline made a sincere and diligent effort to obtain interim employment. Therefore he is entitled to the full backpay claim set forth in the specification ($2,630.79) plus interest. Compare, *Midwest Hanger Co.* and *Liberty Engineering Corp.*, 221 NLRB 911, 922 (Forbis) (1975), enfd. in pertinent part 550 F.2d 1101, 1106 (8th Cir.1977).

E. *John Ford, Jr.*

At the time of his discriminatory termination (May 27, 1975) Ford had just completed his junior year of high school. Ford began working for the Company as a regular part-time employee in the late fall of 1974, through a workstudy program known as DCE. Ford worked from 3 p.m. to 6 p.m. and sometimes later and on Saturdays. Like Douglas Kline, Ford lived at home with his parents in Northbrook, did not have the regular use of an automobile, and relied on walking and bicycling for transportation (the latter until his bicycle was stolen). Ford, who was presented as a company witness, testified that he looked for work in the Northbrook area, and, in particular, at factories along and near Sherman Road (apparent-

[14] In *N.L.R.B.* v. *My Store, supra*, 468 F.2d at 1152, the court of appeals held, in sum, that it would be inequitable to award interest on backpay to the extent that the strikers received weekly payments from their union in the form of interest-free loans. However, in the present case the Board's order, which was enforced in pertinent part by the court of appeals, specifically provides that all reimbursement, including that for insurance claims and benefits, shall be with interest.

ly an industrial and commercial thoroughfare). Ford testified that some plants refused to hire him because he was a high school student. Ford testified that he showed company counsel a list of the places where he looked for work. However, the Company did not present the list in evidence. I credit the testimony of Ford concerning his efforts described above. Ford also testified that he looked for work at department stores in shopping centers in the Northbrook area. However, in his investigatory affidavit Ford admitted that these efforts actually took place after the backpay period. Ford also testified that he registered with the BES, filled out a form (which he described) returned once, but did not receive any benefits. Ford testified that he was told at BES that they would contact him, but he was not notified of any openings. The Company offered in evidence the BES printout previously mentioned, which purported to indicate, with regard to Ford's social security number "SSN not on file." I again rejected the offer, which as indicated was unsupported by any testimony which could establish accuracy or completeness. Ford testified that BES informed him that they kept records only for 6 months or 1 year. Ford's testimony was hearsay; but in the absence of testimony by a qualified witness, the printout had no greater evidentiary weight. Rather Ford's testimony simply confirmed the need for such a witness. I credit the testimony of Ford concerning his efforts to obtain work through BES. Ford further testified that he sought job referrals through private employment services, but that they charged a lot and the referrals were too far from his home. Specifically, Ford indicated that he was unwilling to accept referrals (usually warehouse jobs) to suburban communities located several miles from Northfield, such as Deerfield and Park Ridge, Illinois.

Ford did not obtain employment until November 1975, when he obtained a temporary job with United Parcel Service in Northbrook. In the meantime, Ford did not enroll in the DCE program during his senior year, because he was taking "other courses" that year. There is no evidence that Ford's school hours were altered or that his availability for employment was reduced because of his failure to enroll in the workstudy program. (I take note of the fact that public high schools normally conduct all classes during fixed periods of time.)

Ford worked for United Parcel Service for about 2 months, until January 1976, when he was laid off. Ford testified that he did not apply for a permanent job with United Parcel because they already had many applications on file, and because his supervisor told him he was too slow and should "wait quite a while" before reapplying. Ford testified that after leaving United Parcel he applied for work at various firms in and around Northbrook, and he named or identified the locations of some of these firms. However, Ford did not obtain any employment until he was reinstated by the Company in February 1977. During the summer of 1976 a friend informed Ford that the Mercantile Exchange, located in downtown Chicago, was hiring help. Ford testified that he did not apply because the friend told him that the work was "intense" with a lot of "screaming and yelling," and that he (Ford) felt that he could not handle the pressure. In his testimony, Ford explained, in essence, that he did not feel temperamentally suited to perform sales or other work involving constant dealing with people. Rather Ford preferred to do factory or warehouse work, such as his job with the Company. Ford testified that he also did not look for work during the summer of 1976 because he had just finished high school and did not need a job. The General Counsel determined that Ford did not diligently search for employment during this period. Therefore, the backpay specification does not assert any claim for a portion of the second quarter and all of the third quarter of 1976.

In the fall of 1976, Ford enrolled as a student at the Chicago Art Institute, located in downtown Chicago, about 30 miles from his home. Ford continued his course of study there until May 1977. Ford had courses on Monday, Tuesday, and Wednesday evenings until January 1977, and all day on Fridays and Saturdays. However, neither during this or any other time during the backpay period did he seek full or part-time employment in Chicago. The Company reinstated Ford in February 1977 and he continued to work there until he quit in December 1977.

Ford was the only witness presented with respect to his claim. The Company contends that Ford is not entitled to any backpay because he made no diligent search for interim employment. The arguments advanced in support of this contention might be more persuasive if we were here dealing with an individual who at the time of his discharge had completed his schooling and was a full-time worker or even a part-time worker who was available at various hours. However, the Company's discriminatory termination of Ford placed him in a particularly difficult position. The summer job market for high school students is a limited and competitive one, usually involving more demand than can be satisfied by the available positions. As of the close of the 1974–75 school year, Ford could fairly assume that he had a part-time job for the indefinite future. Instead, within a week the Company discriminatorily terminated Ford, thereby throwing him into this job market at a time when most of his peers who wanted summer jobs had already applied for them, and when most available slots were filled.[15] Moreover, unlike many of his peers, Ford did not have the use of an automobile for commuting to and from work. His community of Northbrook did not have a public transportation system. Although Northbrook was tied into an interurban rail (RTA), that network did not provide accessibility to the factory and warehouse areas where Ford could find the kind of work for which he was qualified. Furthermore, while a full-time member of the work force might reasonably be called upon to expend a substantial amount of time in commuting to and from work, it is unreasonable to expect a high school student, on top of the time needed for his classes and homework, and the time devoted to after school employ-

[15] The Company also imposed another handicap upon Ford in connection with employment during the school year. The decision in the unfair labor practice case indicates that the Company had a policy of accommodating employees (even full-time employees), who wished to attend school, by rescheduling their working hours (233 NLRB 635, at fn. 30). However, other prospective employers might not be so accommodating.

ment, to expend additional time and money in lengthy and difficult commuting. Indeed, use of RTA, which was the only public transportation available to Ford, would probably have eaten up a significant portion of the limited earnings which he could expect from part-time employment. With regard to Ford's failure to participate in the DCE program during his senior year of high school, his testimony indicates that this decision was related to his choice of courses, rather than manifesting an unwillingness to perform after-school work. The record does not indicate that Ford would have discontinued his employment with the Company by making this choice, nor does it indicate that Ford was not available for part-time work during the 1975–76 school year. In fact, as indicated by Ford's testimony, he actively sought part-time work, and obtained such work on a temporary basis during the school year. I find that Ford conducted a good-faith and diligent search for part time or temporary work during the period from his discharge until the summer of 1976, and therefore that he is entitled to the full amount of backpay claimed for this period.

However, the claim for backpay for the fourth quarter of 1976 and the first quarter of 1977 warrants a different result. Ford obtained no interim employment whatsoever during this period. However, he was devoting a considerable portion of his time to his studies at the Chicago Art Institute. Although his courses necessitated his presence in downtown Chicago on 5 days each week, Ford did not indicate that he made any effort to obtain part-time or temporary employment in Chicago or anywhere else outside of the Northbrook area. Ford was taking courses in design, painting, and photography, thereby obtaining at least minimal qualifications in these fields. However, Ford made no effort to obtain any employment in these fields, not even as an unskilled assistant, although it may fairly be inferred that such work was at least potentially available, particularly around the holiday season. In these circumstances, I find that Ford intentionally subordinated and abandoned his search for employment in favor of pursuing his studies at the Chicago Art Institute, and therefore that he is not entitled to backpay for the fourth quarter of 1976 and the first quarter of 1977. In sum, I find that Ford is entitled to backpay in the amount of $3,780.91 plus interest, representing his claim for the period from his discharge through part of the second quarter of 1976.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[16]

The Respondent, Medline Industries, Inc., its officers, agents, successors, and assigns, shall make whole John Chorba, Gregory Fair, John Ford, Jr., Donald R. Holland, Mark Ira Jamison, Mark R. Kenney, Douglas R. Kline, and the estate of Daniel J. Weckler, by paying them the amount set forth below opposite their name, plus interest thereon accrued to the date of payment and computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977), less tax withholdings required by Federal and state laws:

John Chorba	$1,145.89
Gregory Fair	276.87
John Ford, Jr.	3,780.91
Donald R. Holland	838.59
Mark Ira Jamison	1,893.23
Mark R. Kenney	23,386.68
Douglas R. Kline	2,630.79
Estate of Daniel J. Weckler	1,444.87

[16] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.